

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FORMAL PETITION OF SOUTH CENTRAL BELL	)	
TELEPHONE COMPANY FOR CONFIDENTIAL	)	
TREATMENT OF ITS SPECIAL SERVICE CONTRACT	)	CASE NO. 90-218
WITH THE CITY OF LOUISVILLE, FOR ENHANCE-	)	
MENT OF UNIFORM CALL DISTRIBUTION	)	

O R D E R

This matter arising upon petition of South Central Bell Telephone Company ("South Central Bell") filed July 3, 1990 pursuant to 807 KAR 5:001, Section 7, for confidential protection of the cost support data developed in connection with a Special Service Arrangement Contract with the City of Louisville for an enhancement of their existing Uniform Call Distribution on the grounds that disclosure is likely to cause South Central Bell competitive injury, and it appearing to this Commission as follows:

In this proceeding South Central Bell seeks approval of a contract with the City of Louisville for a fiber optic facility. By this petition South Central Bell seeks to protect as confidential the specific dollar amounts of the feature and the cost backup for the monthly rates and non-recurring charges.

The information sought to be protected is not known outside of South Central Bell and is not disseminated within South Central Bell except to those employees who have a legitimate business need to know and act upon it. South Central Bell seeks to preserve the confidentiality of this information through all appropriate means.

In support of its position South Central Bell cites Board of Education v. Lexington-Fayette Urban County Human Rights Comm'n, Ky.App., 625 S.W.2d 109 (1981). That case involved a claim for exemption under KRS 61.878(1)(a) of the Kentucky Open Records Act which exempts from disclosure "information of personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." The court interpreted the phrase "clearly unwarranted invasion of personal privacy" to a balancing of the individual's privacy interest against the general public's interest in disclosure of the information requested. That section is not applicable to this proceeding. However, the Open Records Act contains other exemptions, one of which is applicable here.

807 KAR 5:001, Section 7, derives its authority from KRS 61.878(1)(b). That section exempts from public disclosure information related to scientific research, the application for a loan, or confidential commercial information when such information has previously been obtained from a private party. To qualify for this exemption it must be established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

Since this contract provides information for a fiber optic facility, disclosure of the cost data could give South Central Bell competitors information which would allow them to more readily compete with South Central Bell services by knowing South Central Bell's capital and operating costs as well as contribution for the service. Therefore, disclosure of the information is likely to cause South Central Bell competitive injury and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The cost support data developed by South Central Bell in connection with a Special Arrangement Contract with the City of Louisville for an enhancement to their existing Uniform Call Distribution, which South Central Bell has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. To the extent that it has not already done so, South Central Bell shall, within 10 days of the date of this Order, file an edited copy of the report with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 8th day of August, 1990.

ATTEST:

  
Executive Director

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner